

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

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|----------------------------|----------------|
| Date of Incident: | April 21, 2017 |
| Time of Incident: | 5:22 pm |
| Location of Incident: | [REDACTED] |
| Date of COPA Notification: | April 21, 2017 |
| Time of COPA Notification: | 7:26 pm |

On April 21, 2017, Officer [REDACTED] and Officer [REDACTED] responded to a domestic disturbance at [REDACTED]. Upon arrival, Officer [REDACTED] observed a woman, [REDACTED] yelling from a second-floor porch. Ms. [REDACTED] said her boyfriend, [REDACTED] threatened her with a gun. She pointed at Mr. [REDACTED] who was standing next to a 2005 Ford Explorer. Officer [REDACTED] observed Mr. [REDACTED] place a rifle into the trunk of the 2005 Ford Explorer.

Officer [REDACTED] handcuffed Mr. [REDACTED]. He then entered the trunk compartment of the Ford Explorer. Inside the trunk compartment, Officer [REDACTED] discovered an old sawed-off rifle wrapped in electrical tape. Officer [REDACTED] picked up the rifle's stock with his right hand. He did not place his hand on the trigger. The rifle discharged as Officer [REDACTED] was extracting the rifle from the trunk. The discharged round went into the trunk's floor. The discharged round did not strike anyone. After the rifle discharged, Officer [REDACTED] extracted the rifle from the vehicle and cleared the remaining rounds. He then placed the rifle inside his vehicle and transported the rifle and the offender to the [REDACTED] District police station. At the station, Officer [REDACTED] notified his supervisor of the discharge. The Office of Emergency Management and Communications (OEMC) was notified thereafter.

On April 21, 2017, the Civilian Office of Police Accountability (COPA) received a Firearm Discharge notification² from Sgt. [REDACTED] of the Chicago Police Department (CPD). Based on that notification, COPA brought allegations against Officer [REDACTED] for discharging a firearm without lawful justification and failing to properly take a firearm into custody. After conducting a thorough investigation, COPA determined the evidence supports an Exonerated finding for discharging a firearm without lawful justification and a Not Sustained finding for failing to properly take a firearm into custody.

II. INVOLVED PARTIES

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² CR Log No: #1084933.

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| Involved Officer #1: | ██████████ Star # ██████ Employee ID # ██████ Date of Appointment: ██████, 2006, Police Officer, District ██████ Date of Birth: ██████, 1975, Male, Hispanic |
| Involved Officer #2: | ██████████ Star # ██████ Employee ID # ██████ Date of Appointment: ██████, 2015, Police Officer, District ██████ Date of Birth: ██████, 1990, Female, White |
| Subject #1: | ██████████ Date of Birth: ██████ 1998, Male, White Hispanic |

III. ALLEGATIONS

| Officer | Allegation | Finding |
|----------------|---|---------------|
| Officer ██████ | 1. On April 21, 2017 at 5:22 pm discharged a firearm without lawful justification in violation of Rules 2, 3, 10, 11, and 38. | Exonerated |
| | 2. On April 21, 2017 at 5:22 pm failed to properly take into custody a firearm in violation of Rule 40. | Not Sustained |

IV. APPLICABLE RULES AND LAWS**Rules**

1. Rule 2: Any action or conduct which impedes the Department's efforts to achieves its policy and goals or brings discredit upon the Department.
2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
3. Rule 10: Inattention to duty.
4. Rule 11: Incompetency or inefficient in the performance of duty.
5. Rule 38: Unlawful or unnecessary use or display of a weapon.
6. Rule 40: Failure to inventory and process recovered property in conformance with Department orders.

General Orders

1. G03-02-06: Firearms Discharge Incidents Involving Sworn Members (Effective Date: October 30, 2014)

Special Orders

1. S07-01-04: Firearms Taken Into Custody or Turned In (Effective Date: October 1, 2015)

V. INVESTIGATION³

a. Interviews

On April 13, 2018⁴ and November 20, 2018⁵, COPA interviewed witness Officer [REDACTED]. Officer [REDACTED] stated that on April 21, 2017 she was on-duty, assigned to Beat # [REDACTED] with her partner, Officer [REDACTED]. Officer [REDACTED] and Officer [REDACTED] were dispatched to [REDACTED] to investigate a domestic disturbance. Upon arrival, Officer [REDACTED] observed a female, later identified as [REDACTED] positioned on a porch yelling and pointing at a male, [REDACTED] who was positioned in the street, next to a vehicle. Ms. [REDACTED] yelled that her boyfriend, Mr. [REDACTED] had a gun, he threatened her with the gun, and the gun was in the vehicle.⁶ Initially, Officer [REDACTED] approached the female and Officer [REDACTED] approached Mr. [REDACTED].

Officer [REDACTED] entered the trunk of the vehicle next to Mr. [REDACTED]. Officer [REDACTED] stood behind Mr. [REDACTED]. Officer [REDACTED] heard a loud boom, which drew her attention. Officer [REDACTED] shouted, "it just went off." Officer [REDACTED] recovered the rifle from the trunk. Officer [REDACTED] stated that she did not recall if Officer [REDACTED] had gloves on his hands.⁷

Mr. [REDACTED] was placed into custody and Officer [REDACTED] called for police assistance. Thereafter, Officer [REDACTED] and Officer [REDACTED] went to the station and notified their supervisor about the incident. Officer [REDACTED] believed Officer [REDACTED] gave the recovered rifle to the responding tactical unit.

Officer [REDACTED] did not recall whether the trunk was open or closed prior to Officer [REDACTED] entry. She did not observe Officer [REDACTED] reach into the vehicle, nor did she recall if she saw the firearm in Officer [REDACTED] hand prior to it discharging. At some point, Officer [REDACTED] observed the gun in the compartment portion of the trunk, but did not recall if the bolt was in the rifle.

On April 27, 2018, COPA interviewed accused Officer [REDACTED].⁸ Officer [REDACTED] stated that on April 21, 2017, he was in uniform and partnered with Officer [REDACTED]. They were assigned to Beat # [REDACTED] and were dispatched at 5:00 pm to [REDACTED] due to a domestic disturbance. Upon arrival, and while still situated in his vehicle, Officer [REDACTED] heard a female yelling, "he's got a gun" while pointing to a male subject positioned on the street. Officer [REDACTED] observed the male subject place a rifle in the rear of a tan Ford Explorer. Officer [REDACTED] stated he feared for his safety after observing the rifle.⁹ He believed the rifle was an

³ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁴ Attachment 18.

⁵ Attachment 34.

⁶ Attachment 18 at 5:18.

⁷ Attachment 34 at 2:30.

⁸ Attachment 22.

⁹ *Id.* at 27:39.

immediate threat to himself, his partner, and civilians due to the nature of the call.¹⁰ Officer [REDACTED] exited his vehicle and handcuffed the male to further investigate the matter.

Officer [REDACTED] went into the trunk of the SUV and lifted the handle of a smaller compartment. He observed a rifle positioned next to various pieces of "clutter," such as rags, windshield wiper fluid, oil, and canisters. Officer [REDACTED] grabbed the stock of the rifle with his right hand, his dominate hand, while his left hand held the lid of the compartment open. Officer [REDACTED] lifted and tilted the gun to face north, so that the muzzle faced toward the front of the vehicle. As Officer [REDACTED] was lifting the rifle, the rifle discharged. The discharged round went into the floor of the compartment. Officer [REDACTED] does not recall if the rifle dragged or tapped something, but believed the bolt of the rifle may have hit something as he lifted the rifle. Officer [REDACTED] stated that at no time did his finger touch the trigger of the rifle. He does not recall if he wore gloves prior to handling the rifle. After the rifle discharged, Officer [REDACTED] pulled the rifle out of the compartment and cleared the rifle of the remaining rounds. He placed the rifle and the offender into his vehicle and transported them back to the [REDACTED] District.

Upon arrival at the [REDACTED] District, Officer [REDACTED] informed Sgt. [REDACTED] of the unintentional weapon discharge. Officer [REDACTED] completed a Tactical Response Report (TRR) and was subjected to a breathalyzer and urine sample. Officer [REDACTED] described the firearm as an old bolt action rifle wrapped in black electrical tape with a sawed-off and shortened barrel.

b. Digital Evidence

On April 21, 2017, Evidence Technician [REDACTED] Star # [REDACTED] and Evidence Technician [REDACTED] Star # [REDACTED] photographed evidence, including the firearm, metal fragment, the location of the discharged round, and the vehicle involved.¹¹



Photograph of Firearm Recovered with Detached Bolt

¹⁰ *Id.* at 28:10.

¹¹ Attachment 12.

c. Physical Evidence

A **Crime Scene Processing Report**¹² was authored by Officer [REDACTED] Star # [REDACTED] on April 25, 2017. The firearm was determined to be a "J Stevens" Model C .22 Long Bolt Action Rifle. The recovered cartridge case was examined and determined to be an expelled round from the recovered firearm.¹³

A **Second Crime Scene Processing Report**¹⁴ was authored by Officer [REDACTED] and additional testing was performed on the rifle. Officer [REDACTED] concluded that the firearm is capable of discharge without the trigger being pulled in three instances: 1) unlocking the bolt with the cocking knob in the cocked position, 2) when the cocking knob is to the rear and the firearm is struck with an external force, and 3) when the cocking knob is to the rear and the firearm is dropped.¹⁵

A **Firearms Receipt and Worksheet Report**¹⁶ was completed by Officer [REDACTED] on April 25, 2017. Officer [REDACTED] noted the recovered rifle was consistent with a "short-barreled rifle." The barrel was cut down to less than sixteen inches and the rifle had been cut down to an overall length of less than twenty-six inches. The stock of the firearm was brown wood and the stock and part of the barrel was wrapped with black tape. The firearm did not display a serial number as serial numbers were not required on rifles manufactured prior to 1968. The report does not indicate the date the firearm was originally manufactured.

A **Synoptic Report**¹⁷ was completed by Sergeant [REDACTED] Star # [REDACTED] on or about April 24, 2017. The results of a breathalyzer test of Officer [REDACTED] performed on April 21, 2017 at 8:45 pm, returned a blood alcohol content level of .000. A urine specimen was obtained from Officer [REDACTED] on April 21, 2017 at 9:35 pm and tested for presence of narcotics. Officer [REDACTED] tested negative for narcotics.

d. Documentary Evidence

OEMC Event Query Reports¹⁸ indicated there was an accidental discharge of a firearm while Star # [REDACTED] was recovering the offender's weapon. The incident was recorded under event # [REDACTED]. Event # [REDACTED] also indicated Officer [REDACTED] requested an evidence technician for an accidental discharge of a firearm into a vehicle.

An **Arrest Report**¹⁹ for RD# [REDACTED] authored by Officer [REDACTED] Star # [REDACTED] indicated the arresting officers responded to [REDACTED] on April 21, 2017,

¹² Attachment 10.

¹³ Attachment 17 *cf.* Attachment 15 *cf.* Attachment 10. Attachment 17 states one spent/discharged/.22 round was recovered under Inventory No: # [REDACTED]. Attachment 15 states a metal fragment was recovered, but under Inventory No: # [REDACTED]. Attachment 10 states a .22 long rifle cartridge case was recovered under Inventory No: # [REDACTED] and subsequently tested.

¹⁴ Attachment 35.

¹⁵ *Id.* at Page 5.

¹⁶ Attachment 23.

¹⁷ Attachment 9.

¹⁸ Attachment 6.

¹⁹ Attachment 5.

to assist Beat # [REDACTED] with a domestic disturbance call. The victim, [REDACTED] related that following a verbal altercation with the offender, [REDACTED] Mr. [REDACTED] said, "I'm going to get that gun and you know what I'm a do." Beat # [REDACTED] observed Mr. [REDACTED] place a firearm in the trunk of a 2005 Ford Explorer. The arresting officers recovered a loaded .22 long rifle with a sawed-off handle.

An **Original Case Incident Report**²⁰ for RD# [REDACTED] authored by Officer [REDACTED] indicated Beat # [REDACTED] responded to a domestic disturbance call at [REDACTED] on April 21, 2017. Upon arrival the responding officers encountered the victim, [REDACTED] the ex-girlfriend of the offender, [REDACTED] Ms. [REDACTED] yelled to the officers, "He has a large gun, I want him arrested!" The officers approached Mr. [REDACTED] and observed him place a firearm in the trunk of a 2005 Ford Explorer. The officers detained Mr. [REDACTED] Officer [REDACTED] told Officer [REDACTED] that while removing the firearm from the vehicle, the bolt of the firearm struck a compartment in the trunk which caused the firearm to discharge. The firearm was inventoried under # [REDACTED] Tactical Team Lt. [REDACTED] was notified at 5:58 pm, Station Supervisor Lt. [REDACTED] was notified at 6:03 pm, Crime Prevention and Information Center (CPIC) was notified at 6:10 pm, Commander [REDACTED] and Captain [REDACTED] were notified at 7:00 pm, and evidence technicians were ordered on scene at 7:30 pm.

A **Property Inventory Report**,²¹ # [REDACTED] was generated indicating a then unknown make and model, .22 Long Sawed-Off Rifle, on April 21, 2017. Eighty-three (83) .22 rounds²² and a metal fragment were recovered.²³ Officer [REDACTED] recovered the rifle²⁴ and the eighty-three .22 rounds.²⁵ The metal fragment was recovered by Officer [REDACTED]²⁶

A **Tactical Response Report**²⁷ authored by Officer [REDACTED] indicated on April 21, 2107, at approximately 5:23 pm, he responded to a domestic disturbance call at [REDACTED] During the recovery of a firearm, the firearm discharged when the bolt portion struck a compartment within the trunk. One round was discharged from the firearm striking the trunk compartment's floor board. Officer [REDACTED] indicated the discharge was unintentional.

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;

²⁰ Attachment 4.

²¹ Attachment 17.

²² Attachment 16.

²³ Attachment 15.

²⁴ Attachment 29.

²⁵ Attachment 28.

²⁶ Attachment 30.

²⁷ Attachment 20.

3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

COPA must apply a preponderance of the evidence standard to determine whether allegations of misconduct are well-founded.²⁸ A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true. *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100. Here, it is alleged Officer [REDACTED] (1) discharged a firearm without lawful justification, and (2) failed to properly take into custody a firearm.

a. Allegation 1: Discharge a Firearm without Lawful Justification

The evidence unequivocally shows a firearm handled by Officer [REDACTED] unintentionally discharged. At issue is whether his actions leading to that discharged breached those of a reasonable officer in his position at that time. The totality of the circumstances suggests they did not. Officer [REDACTED] took no physical action that could be construed as intentionally or recklessly causing the rifle to discharge. There is no evidence Officer [REDACTED] mishandled the rifle. His clear intention was to recover and secure the rifle. General Order G03-02-06 outlines the procedures required following an unintended or accidental discharge.

That order defines an unintentional firearm discharge as, "the unintended or accidental firing of a firearm in circumstances which did not occur during a training exercise and do not involve injury via the firearm."²⁹ When a police officer unintentionally discharges a firearm, they are required to notify OEMC, their immediate supervisor and the station supervisor in the district of occurrence. The officer is also required to complete a TRR. On April 21, 2017, the discharged firearm did not occur during a training exercise and did not result in injury. Officer [REDACTED] satisfied the required steps following the unintentional discharge by completing a TRR and notifying all required personnel.

²⁸ Municipal Code of Chicago § 2-78-110.

²⁹ Chicago Police Department General Order G03-02-06.

Officer [REDACTED] was dispatched to [REDACTED] to investigate a domestic disturbance. Upon arrival, Officer [REDACTED] observed a female yelling, "he's got a gun" while pointing at a male. Officer [REDACTED] turned his attention to the male subject and observed the male subject place a rifle in the trunk of a Ford Explorer. He handcuffed the male subject and attempted to recover the rifle from the Ford Explorer.

Officer [REDACTED] used his right dominate hand to grab the rifle's stock. His left hand was positioned on the handle of the compartment to ensure the compartment remained open during the extraction of the rifle. The rifle did not discharge when Officer [REDACTED] first placed his right hand on the stock of the rifle. The rifle discharged when Officer [REDACTED] was attempting to extract the firearm from the compartment of the trunk and the bolt of the rifle struck something within the trunk. Officer [REDACTED] credibly stated that at no time during the recovery of the rifle did his finger touch the trigger. Once the firearm was removed from the compartment, Officer [REDACTED] successfully cleared the weapon.

Firearm testing performed by the Chicago Police Department indicated that the rifle could be discharged without pulling the trigger. Two pertinent findings by the Chicago Police Department align with the explanation given by Officer [REDACTED]. The rifle can discharge if the bolt is unlocked after the cocking know is in the cocked position. The rifle can also discharge when the cocking knob is to the rear and an external force strikes the cut end grip of the rifle. Both findings are consistent with Officer [REDACTED] stating that the rifle discharged after the bolt may have hit something during the recovery process.

After the incident, Officer [REDACTED] returned to the [REDACTED] District and informed Sgt. [REDACTED] of the accidental discharge. OEMC was also notified. Officer [REDACTED] also completed a TRR.

There is no doubt the discharge was unintentional. Officer [REDACTED] never placed his hand on the trigger and the Chicago Police Department found that the rifle could discharge without the trigger being pulled. Officer [REDACTED] followed the correct procedures under General Order G03-02-06 with respect to unintentional firearm discharge incidents. The firearm discharge occurred, but Officer [REDACTED] actions were lawful and proper. Based on a clear and convincing analysis of the evidence, COPA recommends a finding of Exonerated.

b. Allegation 2: Failed to Properly take into Custody a Firearm

Based on the evidence and relevant directives, there is not enough evidence to determine whether Officer [REDACTED] followed, as required, Special Order S07-01-04, 'Firearms Taken Into Custody or Turned In.' Officer [REDACTED] took into custody a firearm he believed was involved into a domestic disturbance incident but may have failed to follow proper procedures.

Pursuant to Special Order S07-01-04, any member who takes into custody a firearm will ensure the firearm is unloaded **while wearing fresh rubber gloves**, unless exigent circumstances exists. (emphasis added).

Officer [REDACTED] recovered the offender's firearm. He did not recall if he wore gloves while handling the firearm. His partner did not recall if Officer [REDACTED] had gloves on his hands. There is no evidence to suggest he did not have gloves on his hand; however there is not enough evidence to confirm he wore gloves prior to the handling the firearm. After recovering the firearm from the trunk of the vehicle, Officer [REDACTED] then secured the weapon and brought it to the [REDACTED] District, where evidence technicians were notified to process the recovery of other items seized from the offender's vehicle.

Under a preponderance of the evidence standard, as there is not enough evidence to support the conclusion that Officer [REDACTED] had or did not have gloves on his hands prior to the recovery of the rifle, COPA recommends a finding of Not Sustained.

VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

| Officer | Allegation | Finding |
|--------------------|---|---------------|
| Officer [REDACTED] | 1. On April 21, 2017 at 5:22 pm discharged a firearm without lawful justification in violation of Rules 2, 3, 10, 11, and 38. | Exonerated |
| | 2. On April 21, 2017 at 5:22 pm failed to properly take into custody a firearm in violation of Rule 40. | Not Sustained |

Approved:

[REDACTED]

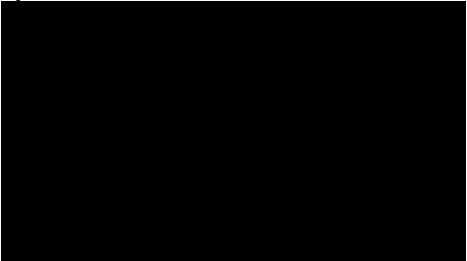
Deputy Chief Administrator – Chief Investigator

Date

3-27-19

Appendix A

Assigned Investigative Staff

| | |
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| Squad#: | 12 |
| Investigator: |  |
| Supervising Investigator: | |
| Attorney | |
| Deputy Chief Administrator: | |